

AMENDED IN ASSEMBLY JUNE 22, 2004

AMENDED IN SENATE MAY 25, 2004

AMENDED IN SENATE MAY 13, 2004

AMENDED IN SENATE APRIL 12, 2004

AMENDED IN SENATE MARCH 23, 2004

SENATE BILL

No. 1676

Introduced by Senator Romero

February 20, 2004

An act to ~~amend Section 6129 of~~ *add Section 5030* to the Penal Code, relating to ~~crime-prisoners~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 1676, as amended, Romero. ~~Crime Prisoners~~.

Existing law generally regulates the powers and authority of the Youth and Adult Correctional Agency.

This bill would require the Department of Corrections and the Department of the Youth Authority to collect specified data regarding lockdowns at facilities administered by the Youth and Adult Correctional Agency, and require the Department of Corrections and the Department of the Youth Authority to post the information to the respective department's Web site.

~~Existing law requires the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms to refer matters involving criminal conduct in the context of employee retaliation to the~~

~~proper law enforcement authorities for further action and also to notify the Attorney General of the action. Existing law provides that if the local district attorney refuses to accept the case, the matter shall be referred to the Attorney General.~~

~~This bill would require the Attorney General to conduct an independent, de novo evaluation of the evidence of criminal conduct and to make a determination as to whether there is sufficient evidence to sustain a conviction in specified categories of cases.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 6129 of the Penal Code is amended to~~
2 *SECTION 1. Section 5030 is added to the Penal Code, to*
3 *read:*
4 *5030. (a) The Department of Corrections and the*
5 *Department of the Youth Authority shall collect data from the*
6 *Youth and Adult Correctional Agency regarding lockdowns, as*
7 *specified in subdivision (b). The information shall be posted by the*
8 *Department of Corrections and the Department of the Youth*
9 *Authority on the respective department's Web site and shall be*
10 *updated quarterly. The information shall be collected and*
11 *displayed on the Web site for each facility administered by the*
12 *Youth and Adult Correctional Agency. Only lockdowns of 15 days*
13 *or longer shall be reported pursuant to this section.*
14 *(b) The information collected shall include, but not be limited*
15 *to, the following:*
16 *(1) The beginning date of the lockdown.*
17 *(2) The duration of the lockdown.*
18 *(3) The current lockdowns for the currently reported quarter,*
19 *and the lockdowns that occurred in the prior quarter.*
20 *(4) The name of the institution.*
21 *(5) The name of the housing unit or other units or portions of*
22 *units subject to the lockdown at the institution.*
23 *(6) Identifying characteristics of the population subject to the*
24 *lockdown, such as ethnicity, or race.*
25 *(7) The inmate classification level subject to the lockdown.*
26 *(8) The reason for imposing the lockdown.*
27 *(9) The reason for lifting the lockdown.*

(10) *The number of prisoners subject to the lockdown.*

read:

~~6129. (a) (1) For purposes of this section, “employee” means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.~~

~~(2) For purposes of this section, “retaliation” means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:~~

~~(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.~~

~~(B) Has cooperated or is cooperating with any investigation of improper governmental activities.~~

~~(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.~~

~~(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:~~

~~(A) Unwarranted or unjustified staff changes.~~

~~(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.~~

~~(C) Unwarranted or unjustified formal or informal investigations.~~

~~(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.~~

~~(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.~~

~~(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of~~

~~1 alleged retaliation to the State Personnel Board for appropriate
2 action.~~

~~3 (e) Any employee at any rank and file, supervisory, or
4 managerial level, who intentionally engages in acts of reprisal,
5 retaliation, threats, coercion, or similar acts against another
6 employee, pursuant to paragraph (2) of subdivision (a), shall be
7 disciplined by adverse action as provided in Section 19572 of the
8 Government Code. If no adverse action is taken, the State
9 Personnel Board shall invoke adverse action proceedings as
10 provided in Section 19583.5 of the Government Code.~~

~~11 (d) (1) In addition to all other penalties provided by law,
12 including Section 8547.8 of the Government Code or any other
13 penalties that the sanctioning authority may determine to be
14 appropriate, any state employee at any rank and file, supervisory,
15 or managerial level found by the State Personnel Board to have
16 intentionally engaged in acts of reprisal, retaliation, threats, or
17 coercion shall be suspended for not less than 30 days without pay,
18 and shall be liable in an action for damages brought against him
19 or her by the injured party. If the State Personnel Board determines
20 that a lesser period of suspension is warranted, the reasons for that
21 determination must be justified in writing in the decision.~~

~~22 (2) Punitive damages may be awarded by the court if the acts
23 of the offending party are proven to be malicious. If liability has
24 been established, the injured party also shall be entitled to
25 reasonable attorney's fees as provided by law.~~

~~26 (e) Nothing in this section shall prohibit the employing entity
27 from exercising its authority to terminate, suspend, or discipline
28 an employee who engages in conduct prohibited by this section.~~

~~29 (f) The Inspector General, the Youth and Adult Correctional
30 Agency, the Department of the Youth Authority, the Department
31 of Corrections, the Board of Corrections, the Youthful Offender
32 Parole Board, and the Board of Prison Terms shall refer matters
33 involving employee criminal conduct to the proper law
34 enforcement authorities in the appropriate jurisdiction for further
35 action. The entity making a referral to the local district attorney
36 shall also notify the Attorney General of the action. If the local
37 district attorney refuses to accept the case, he or she shall notify the
38 referring entity who shall subsequently refer the matter to the
39 Attorney General. If the local district attorney has not acted on the
40 matter, the referring entity shall notify the Attorney General. The~~

~~Attorney General shall conduct an independent, de novo evaluation of the evidence of criminal conduct being referred to determine whether there is sufficient evidence to sustain a conviction in cases involving death, or serious bodily injury, as that term is defined in Section 243, cases involving the use of excessive force in violation of Section 149, cases of retaliation as defined in this section, cases of perjury as defined in Section 118, or cases of filing a false report in violation of Section 118.1. Whether or not to prosecute the matter shall remain within the sole discretion of the Attorney General. It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation that may arise in a case in which an investigation has been or is currently being conducted by the Bureau of Investigation by contracting when necessary for private counsel.~~

~~(g) Upon the completion of any investigation of retaliation, the Inspector General shall prepare a written report, which shall be held as confidential and disclosed in confidence, only to the Secretary of the Youth and Adult Correctional Agency, the Governor, and the appropriate director or law enforcement agency. A summary of the report's findings and conclusions shall be made available, upon request, to the person who requested the investigation, the person or persons who were the subjects of the investigation, and to any Member of the Legislature.~~

~~(h) Nothing in this section shall preclude the office of the Inspector General from following all applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act, and the provisions of Section 832.7 relating to the disposition notification for complaints against peace officers.~~